

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No:** 19-001-15-1-5-00205-15  
**Petitioners:** Brian and Janet Meyer  
**Respondent:** Dubois County Assessor  
**Parcel:** 19-11-15-400-024.000-001  
**Assessment Year:** 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Petitioners initiated the 2015 appeal with the Dubois County Property Tax Assessment Board of Appeals (“PTABOA”) on August 24, 2015. On October 2, 2015, the PTABOA issued its Notification of Final Assessment Determination (“Form 115”), making no change to the assessment. Petitioners filed their Petition for Review of Assessment (“Form 131”) with the Board on December 28, 2015.
2. Petitioners elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Gary Ricks, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 15, 2017. Neither the ALJ nor the Board inspected the property.
4. Taxpayer Brian Meyer was sworn and testified for Petitioners. Attorney Marilyn Meighen represented Respondent. Dubois County Assessor Gail Gramelspacher and Appraisal Program Supervisor Natalie Jenkins were sworn and testified for Respondent.

**Facts**

5. The property under appeal consists of approximately 26 acres and is located at 2954 South U.S. 231 in Huntingburg.
6. For 2015, the total assessed value was \$191,500. The value of the improvements was \$122,600 and the value of the land was \$68,900. Specifically, one-half acre of the land was assessed as commercial using base rates of \$50,000 per acre for the primary land, \$34,000 for the homesite land, and \$2,050 for the public road and right of way, the farm pond, the woodlands, and the tillable land. Petitioners did not request a specific value.

## Record

7. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

Petitioner Exhibit 3:	Property record card (“PRC”) for Parcel #19-10-11-400-013.000-017 in Saint Anthony, IN,
Petitioner Exhibit 6:	PRC for Parcel #19-09-29-400-043.002-014 Birdseye,
Petitioner Exhibit 6A:	Photograph of Welp Farm and Greenhouse,
Petitioner Exhibit 8:	PRC for Parcel #19-06-11-300-032.000-011 in Jasper,
Petitioner Exhibit 9:	PRC for Parcel #19-06-29-200-015.001-016 in Jasper,
Petitioner Exhibit 12:	PRC for Parcel #19-11-22-100-004.001-019 in Huntingburg,
Petitioner Exhibit 13:	PRC for Parcel #19-11-22-200-013.000-019 in Jasper,
Petitioner Exhibit 14:	Hand-drawn map of subject property,
Petitioner Exhibit 15:	PRC for Parcel #19-06-11-300-031.000-011 in Jasper,
Petitioner Exhibit 16:	PRC for Parcel #19-11-02-300-036.000-002 in Huntingburg,
Petitioner Exhibit 18:	PRC for Parcel #19-06-34-302-106.000-002 in Jasper,
Petitioner Rebuttal Exhibit 1:	PRC for Parcel #19-11-11-200-008.006-002 in Jasper,
Respondent Exhibit A:	PRC for the subject property,
Respondent Exhibit B:	Aerial map of the subject property,
Respondent Exhibit C:	Photographs of the subject property,
Respondent Exhibit D:	Personal property tax documents,
Respondent Exhibit E:	Commercial sales spreadsheet,
Respondent Exhibit F:	Area commercial land PRCs,
Respondent Exhibit G:	<i>Meyer v. Dubois Co. Assessor</i> , Pet. No. 19-001-11-1-5-00015 (Ind. Bd. Tax Rev. January 2, 2014).

The following items are also recognized as part of the record:

Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of hearing,
Board Exhibit D:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

## Objections

8. Petitioners objected to Respondent Exhibit B, an aerial photograph of the subject property, claiming it incorrectly represents the property lines. The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.
9. Petitioners objected to Respondent Exhibit C, photographs of the subject property, stating that one of the photographs was taken at the time of a previous appeal. The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.
10. Petitioners objected to Respondent Exhibit E, a spreadsheet describing certain commercial sales, claiming the properties it refers to are “not in the same classification” as the subject property. The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.
11. Petitioners objected to Respondent Exhibit G, a prior determination issued by the Board, contending that it is irrelevant. Respondent acknowledges that the exhibit “is technically not an exhibit it is a matter of public record and the Board has it in its own records.” The Board agrees with Respondent’s characterization. Furthermore, the objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.
12. Ms. Meighen objected to Petitioner Exhibit 14, a hand-drawn map of the subject property with a small scrap of paper taped to it. Ms. Meighen contends that the drawing does not have a signature and that “we don’t know what skills or talents went into” it and that it is “frankly just too casual to have any basis.” The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.
13. Ms. Meighen objected to Petitioner Exhibit 16, a PRC for a parcel designated as agricultural. Ms. Meighen contends that the agricultural base rate applied in the exhibit is state-mandated and is therefore not relevant. The objection goes to the weight of the evidence rather than its admissibility. Consequently, the objection is overruled.
14. Ms. Meighen objected to Mr. Meyer’s question of Ms. Gramelspacher asking “[W]ould you say that you made a comment that what percentage do you feel goes into making a successful business as far as solely on location?” Ms. Meighen argued that the question of “who is earning more money” is “completely beyond the scope” and is not relevant to the appeal. The objection is sustained.
15. Ms. Meighen objected to Mr. Meyer’s question of Ms. Gramelspacher asking “Is that location of the hospital referred to they paid a price and deep pockets warrant paying that type of value?” Ms. Meighen argued that the question was beyond scope in that Ms.

Gramelspacher never testified with regard to intent. The objection is sustained.

16. Ms. Meighen objected to the following by Mr. Meyer on the basis that it is a compound question:

Has there been any changes in as far as discounts, one person versus discounts somebody else because it is platted? Has there been any changes in the 231 property that would warrant legally that my property should go up, which was tried four years ago 400% because it was transferred . . . that somebody could get a discount yet mine be transferred from use to . . . from farm ag to excess acreage does that make it fair by giving somebody a purchaser discount and increasing somebody else's taxes 400%?

The objection is sustained.

17. Ms. Meighen objected to the following by Mr. Meyer on the basis of scope, speculation, and that it is a compound question:

I guess with the aspects the reason that people of Jasper because their property values are higher and given the school district is in more demand because they have more money to work with creating demand because the school system has 30% higher tax base than properties are higher, so that can go to the school district because it is not necessarily the teachers are better but they have more collateral to work with taxation versus the other surrounding school districts.

The objection is sustained.

### **Burden of Proof**

18. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
19. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana

board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

20. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
21. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
22. The assessed value increased from \$189,600 in 2014 to \$191,500 in 2015 which represents an increase of less than 5%. Petitioners, therefore, have the burden of proof.

### **Summary of the Parties’ Contentions**

Petitioners’ case:

23. Petitioners contend that the subject property is no longer being maintained as a commercial or retail site. Rather, while there is a rental unit situated on the property, the property otherwise consists merely of a nursery for boxwood trees and also contains a small pond. They contend that the only source of water on the property is water that drains off of the roof, which limits the property’s use. They further contend that the presence of a sign on the property does not mean that an active business is located thereon. *Meyer testimony.*
24. Petitioners contend that Respondent informed them that parcels similar to the subject property, with primary frontage on U.S. 231, are typically assessed at a base rate of \$50,000 per acre. However, they argue that other purportedly comparable properties which they have identified are assessed significantly lower than the subject property. *Meyer testimony.*
25. Petitioners presented information on the following purportedly comparable properties in support of their argument:
  - a. Parcel #19-10-11-400-013.000-017, located on East Schnellville Road in St. Anthony, consists of 1.19 acres of primary land which was assessed at \$13,000 per acre for 2015. *Meyer testimony; Pet’r Ex. 3.*

- b. Parcel #19-09-29-400-043.000-014, located at 7907 East State Road 64 in Birdseye, consists of one acre of homesite land and 2.79 acres of non-agricultural acreage land which were assessed at \$12,000 per acre and \$3,500 per acre respectively for 2015. Petitioners contend that the Welp Farm and Greenhouse, a retail operation, is situated on this parcel. *Meyer testimony; Pet'r Ex. 6 and 6A.*
- c. Parcel #19-06-11-300-032.000-011, located at 4390 North U.S. 231 in Jasper, consists of one acre of homesite land and 3.5 acres of undeveloped usable land which were assessed at \$12,000 per acre and \$5,000 per acre respectively for 2015. Petitioners contend that this parcel has water and sewage utilities and an entrance on U.S. 231. *Meyer testimony; Pet'r Ex. 8.*
- d. Parcel #19-06-29-200-015.001-016, located on West County Road 155 North in Jasper, consists of 2.3 acres of non-agricultural acreage land which was assessed at \$20,000 per acre for 2015. *Meyer testimony; Pet'r Ex. 9.*
- e. Parcel #19-11-22-100-004.001-019, located at 3288 South U.S. 231 in Huntingburg, consists of 2.8 acres of non-agricultural acreage land and one acre of homesite land which were assessed at \$9,200 per acre and \$14,000 per acre respectively for 2015. Petitioners contend that this property has access to U.S. 231 and was previously the home of 231 Motorsports. *Meyer testimony; Pet'r Ex. 12.*
- f. Parcel #19-11-22-200-013.000-019, located on East U.S. 231 South in Jasper, consists of 0.57 acres of non-agricultural acreage land which was assessed at \$9,200 per acre for 2015. Petitioners contend that this property has access to U.S. 231. *Meyer testimony; Pet'r Ex. 13.*
- g. Parcel #19-06-11-300-031.000-011, located at 4636 North U.S. 231 in Jasper, consists of two acres of primary land which was assessed at \$13,000 per acre for 2015. Petitioners contend that this property has access to U.S. 231. *Meyer testimony; Pet'r Ex. 15.*
- h. Parcel #19-11-02-300-036.000-002, located on South State Road 231 in Huntingburg, consists of 3.956 acres of tillable land and 0.185 acres of woodland land which were each assessed at \$1,960 per acre for 2015. Petitioners contend that this parcel partially consists of U.S. 231 frontage property. *Meyer testimony; Pet'r Ex. 16.*
- i. Parcel #19-06-34-302-106.000-002, located at 1952 West Andrew Lane in Jasper, consists of 0.9256 acres of front lot land which was assessed at approximately \$25,800 per acre for 2015. *Meyer testimony; Pet'r Ex. 18.*
- j. Parcel #19-11-11-200-008.006-002, located on Lube Way in Jasper, consists of

1.3774 acres of front lot land which was assessed at approximately \$24,685 per acre for 2015. *Meyer testimony; Pet'r Rebuttal Ex. 1.*

26. In light of the above information, Petitioners contend that the subject property is over-assessed for 2015. *Meyer testimony.*

Respondent's case:

27. Respondent views the subject property as a "multi-use property" consisting of approximately 26 acres. Respondent contends that the property contains a rental property, some commercial property, a road right-of-way, a farm pond, a small portion of tillable land, and some woodland area that is enrolled in a timber management program. The subject property has frontage on U.S. 231 which, Respondent contends, makes it more commercially viable and more valuable than a property that doesn't have frontage on U.S. 231. *Gramelspacher testimony; Jenkins testimony, Resp't Ex. A.*
28. Respondent contends that the property is prone to flooding and, as a result, the tillable and woodland portions are afforded negative influence factors of 80%. She further contends that the public road portion has no value and that the values for the farm pond, tillable land, and woodland area are based on acreage rates provided by the Department of Local Government Finance. *Gramelspacher testimony; Resp't Ex. A.*
29. Respondent's Exhibit B shows an outline of what Respondent characterizes as the business portion of the property. The outlined section consists of one-half acre that was assessed at a base rate of \$50,000 per acre. *Gramelspacher testimony, Resp. Ex. B.*
30. Respondent notes that Petitioners made a "personal property business filing" for 2015 under the name of "Meyer Creative Landscapes, Inc." The address on the filing is that of the subject property. The document was filed with Respondent's office for taxation purposes and lists certain equipment owned by Petitioners. *Gramelspacher testimony, Resp. Ex. D.*
31. Respondent contends that the parcels offered as comparable properties by Petitioners are significantly different from the subject property. For instance, the properties are from various different school systems which can significantly affect the desirability and resulting value of a property. *Gramelspacher testimony.*
32. Respondent presented a spreadsheet containing data for three purportedly comparable properties that recently sold. The properties are all assessed at a higher price per acre than the subject property which, Respondent contends, supports a base rate of \$50,000 per acre for the primary portion of the subject property. *Jenkins testimony, Resp. Ex. E.*
- a. Parcel #19-11-10-100-019.006-002 is a 1.71 acre property located at 1940 Hospitality Drive in Jasper. The parcel consists of a vacant lot located

approximately two miles from the subject property. It has access to U.S. 231 via County Road 100 South and Hospitality Drive. It sold on August 14, 2013, for \$330,000 or \$192,982 per acre. *Jenkins testimony, Resp. Ex. E.*

- b. Parcel #19-11-03-100-016.013-002 is a 6.602 acre property located on West Division Road in Jasper. The parcel consists of a vacant lot located approximately 3.3806 miles from the subject property. It does not have access to U.S. 231. It sold on October 21, 2015, for \$435,000 or \$65,889 per acre. *Jenkins testimony, Resp. Ex. E.*
  - c. Parcel #19-06-26-304-104.000-002 is a 4.131 acre property located on Bartley Street in Jasper. The parcel consists of land with outbuildings located approximately 4.4 miles from the subject property. It does not have access to U.S. 231. It sold on May 10, 2016, for \$360,000 or \$87,145 per acre. *Jenkins testimony, Resp. Ex. E.*
33. Regarding Petitioner Rebuttal Exhibit 1, Respondent contends that the property described therein is subject to the “developer’s discount” provided for under Ind. Code § 6-1.1-4-12. That provision prevents an assessor from changing the base assessment rate of a property until the property undergoes a change such as being rezoned, put to a different use, or having improvements added to the property. Consequently, Respondent contends that that property is not similar to the subject property. *Gramelspacher testimony, Meighen argument.*
34. In light of the above information, Respondent contends that the subject property is properly assessed for 2015. *Meighen argument.*

### **Analysis**

35. Petitioners failed to make a prima facie case that the 2015 assessed value is incorrect. The Board reached that decision for the following reasons:
- a) Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the

assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b) Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2015 assessment was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c) Here, Petitioners essentially relied upon an assessment comparison approach in attempting to make their case.<sup>1</sup> Indeed, parties may introduce assessments of comparable properties to prove the market value-in-use of the property under appeal. Ind. Code § 6-1.1-15-18(c). In order to effectively use such an approach, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.* at 470-71.
- d) Petitioners in this case basically only observed that the purportedly comparable properties were in the same general area and either did or did not have direct access to U.S. 231. Simply because a property is in the same area as the subject property does not show that it is comparable. Furthermore, Petitioners provided little evidence with regard to lot shape, topography, geographical features, or use as required to determine that the properties presented were comparable to the subject property. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Because Petitioners failed to adequately identify specific similarities in the properties or value the differences between the properties, the assessed values of the purportedly comparable properties do not support a finding that Petitioners'

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<sup>1</sup> Within their analysis, Petitioners implicitly raised the issue of a lack of uniformity and equality in the assessment. As the Tax Court explained in, *Westfield Golf Practice Center*, the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* at 399. Here, Petitioner did not make a showing for a change in the assessment based on lack of uniformity and equality.

property was assessed incorrectly.<sup>2</sup>

- e) Consequently, Petitioners failed to make a prima facie case that the assessment should be reduced. Where a petitioner has not supported its claim with probative evidence, a respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

### Conclusion

36. Petitioners had the burden of proof and failed to make a prima facie case that the 2015 assessment is incorrect. Consequently, the Board finds for Respondent and no change to the 2015 assessment is warranted.

Issued: August 14, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **-APPEAL RIGHTS-**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.

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<sup>2</sup> The Board acknowledges that the one-half acre portion of the parcel that is primarily at issue in this appeal could reasonably be characterized as agricultural. However, Petitioners in this case made no cogent argument to further such position. Similarly, the Board acknowledges that the lack of running water affects the value of the rental, but Petitioners have failed to establish what the value of the rental should be.